

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY THOMAS HARDIN, JR.,

Plaintiff,

v.

PATRICK COVELLO, et al.,

Defendants.

No. 2:23-cv-1902 AC P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. He also seeks a preliminary injunction. ECF No. 3, 8.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF Nos. 2, 6. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

1 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
 2 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
 3 § 1915(b)(2).

## 4 II. Complaint

### 5 A. Statutory Screening of Prisoner Complaints

6 The court is required to screen complaints brought by prisoners seeking relief against “a  
 7 governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a).  
 8 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
 9 “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[]  
 10 monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

11 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”  
 12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
 13 Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal  
 14 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,  
 15 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as  
 16 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a  
 17 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.  
 18 Franklin, 745 F.2d at 1227-28 (citations omitted).

19 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
 20 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
 21 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550  
 22 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
 23 “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context  
 24 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman,  
 25 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure  
 26 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a  
 27 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the  
 28 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain

1 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally  
 2 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur  
 3 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

4 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
 5 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting  
 6 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
 7 content that allows the court to draw the reasonable inference that the defendant is liable for the  
 8 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this  
 9 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.  
 10 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the  
 11 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,  
 12 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

### 13 B. Allegations

14 The complaint alleges that defendants Covello, Lynch, and Jones—wardens at three  
 15 different prisons—and Zuniga—warden at Atascadero State Hospital—have violated plaintiff’s  
 16 rights under the Eighth Amendment.<sup>1</sup> ECF No. 1. Plaintiff alleges that since 2019, he has been  
 17 experiencing a mite infestation on his body that medical staff have repeatedly refused to address.  
 18 Id. Doctors have regularly denied him skin testing and referral to a dermatologist, and while he  
 19 has occasionally been prescribed creams to treat the mites, it has been ineffective or discontinued  
 20 before the mites were completely eradicated, or staff refused to fill the prescriptions. Id. at 5-8.  
 21 Rather than provide him with proper treatment and testing, medical staff have instead attributed  
 22 the condition to suspected drug use and repeatedly referred him to mental health services, stating  
 23 that plaintiff’s belief and symptoms are the product of a delusional disorder. Id. at 5, 7, 13-16.

24 The failure to properly treat plaintiff’s condition has caused him severe anxiety and stress to the

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26  
 27 <sup>1</sup> The complaint also references conduct by various medical staff, some of whom are identified  
 28 by name while others are not. However, none of these individuals are identified as defendants in  
 the complaint’s list of defendants and will therefore not be treated as defendants.

point that he has at times been suicidal. Id. at 9-12. Plaintiff seeks damages and injunctive relief in the form of treatment. Id. at 12, 39-41.

### C. Failure to State a Claim

#### i. Personal Involvement

“Liability under § 1983 must be based on the personal involvement of the defendant,” Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) (citing May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980)), and “[v]ague and conclusory allegations of official participation in civil rights violations are not sufficient,” Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted). Furthermore, “[t]here is no respondeat superior liability under section 1983.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted). A supervisor may be liable for the constitutional violations of his subordinates if he “knew of the violations and failed to act to prevent them.” Taylor, 880 F.2d at 1045. Finally, supervisory liability may also exist without any personal participation if the official implemented “a policy so deficient that the policy itself is a repudiation of the constitutional rights and is the moving force of the constitutional violation.” Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations marks omitted), abrogated on other grounds by Farmer v. Brennan, 511 U.S. 825, 836-38 (1970).

Except for a single statement that unspecified defendants are responsible for providing necessary medical services “under the care of CSP-SAC Warden Jeff Lynch,” plaintiff does not make any specific allegations against any of the named defendants and therefore fails to state any claims for relief against them. Considering that defendants have all been identified as wardens, it appears that they have been named solely based upon their positions as supervisors, which is not sufficient to state a claim against them in their individual capacities.

#### ii. Injunctive Relief

The Ninth Circuit has held that

a corrections department secretary and prison warden were proper defendants in a § 1983 case because “[a] plaintiff seeking injunctive relief against the State is not required to allege a named official’s personal involvement in the acts or omissions constituting the alleged constitutional violation. Rather, a plaintiff need only identify the law or policy challenged as a constitutional violation and name the

official within the entity who can appropriately respond to injunctive relief.”

Colwell v. Bannister, 763 F.3d 1060, 1070 (9th Cir. 2014) (alteration in original) (quoting Hartmann v. Cal. Dep’t of Corr. & Rehab., 707 F.3d 1114, 1127 (9th Cir. 2013)). To the extent plaintiff is seeking injunctive relief in the form of medical care, plaintiff is currently incarcerated at Mule Creek State Prison, and therefore not at a prison under the control of Lynch, Jones, or Zuniga. Moreover, while Covello is identified as the warden of Mule Creek State Prison, the regulations governing the California Department of Corrections provide that wardens have no control over medical decisions. See Cal. Code Regs., tit. 15, §§ 3999.132(a), 3999.200(a). Covello’s lack of control over medical decisions and the allocation of medical resources shows that he cannot “appropriately respond to injunctive relief” requests. Accordingly, none of the defendants appear to be proper defendants from whom plaintiff can obtain the injunctive relief he seeks.

#### D. Leave to Amend

The complaint does not state any cognizable claims for relief and plaintiff will be given an opportunity to file an amended complaint. If plaintiff chooses to file a first amended complaint, he must demonstrate how the conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how each named defendant is involved. Arnold v. Int’l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant’s actions and the claimed deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, “[v]ague and conclusory allegations of official participation in civil rights violations are not sufficient.” Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

In the event plaintiff decides to file an amended complaint, he is advised that in order to state a claim for deliberate indifference he “must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). This requires plaintiff to show (1) “a ‘serious medical need’ by

1 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury  
2 or the unnecessary and wanton infliction of pain,’” and (2) “the defendant’s response to the need  
3 was deliberately indifferent.” Id. (some internal quotation marks omitted) (quoting McGuckin v.  
4 Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992)). He must also identify the conduct of each  
5 defendant that he believes violated his rights and is cautioned that only those persons clearly  
6 identified as defendants will be recognized as defendants. Plaintiff is further advised that, he  
7 should be mindful Rule 8’s short and plain statement requirement and that a complaint that  
8 exceeds twenty-five pages is likely to violate that requirement. Fed. R. Civ. Proc. 8(a)(2).

9 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to  
10 make his first amended complaint complete. Local Rule 220 requires that an amended complaint  
11 be complete in itself without reference to any prior pleading. This is because, as a general rule,  
12 an amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th  
13 Cir. 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928  
14 (9th Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-  
15 pled in subsequent amended complaint to preserve appeal). Once plaintiff files a first amended  
16 complaint, the original complaint no longer serves any function in the case. Therefore, in an  
17 amended complaint, as in an original complaint, each claim and the involvement of each  
18 defendant must be sufficiently alleged.

### 19 III. Motions for Preliminary Injunction

20 Plaintiff has filed two motions for a preliminary injunction directing defendants to provide  
21 him with medical treatment for his mite infestation. ECF Nos. 3, 8. “A plaintiff seeking a  
22 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to  
23 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his  
24 favor, and that an injunction is in the public interest.” Winter v. Nat. Res. Def. Council, Inc., 555  
25 U.S. 7, 20 (2008) (citations omitted).

26 Because plaintiff has not stated any viable claims, he cannot show any likelihood of  
27 success on the merits. Furthermore, a district court has no authority to grant relief in the form of  
28 a preliminary injunction where it has no jurisdiction over the parties. Ruhrgas AG v. Marathon

1 Oil Co., 526 U.S. 574, 584 (1999) (“Personal jurisdiction, too, is an essential element of the  
 2 jurisdiction of a district ... court, without which the court is powerless to proceed to an  
 3 adjudication.” (alteration in original) (citation and internal quotation omitted)). To the extent  
 4 plaintiff seeks relief from defendants, they have not been served, see Zepeda v. United States  
 5 Immigr. & Naturalization Serv., 753 F.2d 719, 727 (9th Cir. 1985) (“A federal court may issue an  
 6 injunction if it has personal jurisdiction over the parties and subject matter jurisdiction over the  
 7 claim; it may not attempt to determine the rights of persons not before the court.”), and as noted  
 8 above, they do not have authority to provide the injunctive relief sought. To the extent plaintiff  
 9 seeks an injunction against unspecified non-defendants, the court does not have jurisdiction over  
 10 those individuals unless plaintiff provides facts showing that they are acting “in active concert or  
 11 participation” with defendants. Fed. R. Civ. P. 65(d)(2); Zenith Radio Corp. v. Hazeltine Rsch.  
 12 Inc., 395 U.S. 100, 112 (1969) (“[A] nonparty with notice cannot be held in contempt until shown  
 13 to be in concert or participation.”). Plaintiff has failed to provide any such facts.

14 For these reasons, the motions for a preliminary injunction should be denied.

#### 15 IV. Plain Language Summary of this Order for a Pro Se Litigant

16 Your request to proceed in forma pauperis is granted. That means you do not have to pay  
 17 the entire filing fee now. You will pay it over time, out of your trust account.

18 Your complaint will not be served because the facts you alleged are not enough to state a  
 19 claim. You have not explained what each defendant did or did not do to violate your rights and  
 20 they do not appear to be the persons with authority to provide you with the injunctive relief you  
 21 are requesting. You must also name as defendants the individuals who were responsible for the  
 22 conduct about which you are complaining.

23 You may amend your complaint to try to fix these problems. Be sure to provide facts that  
 24 show exactly what each defendant did to violate your rights or to cause a violation of your rights.

25 If you choose to file a first amended complaint, it must include all claims you want to  
 26 bring. Once an amended complaint is filed, the court will not look at any information in the  
 27 original complaint. **Any claims and information not in the first amended complaint will not**  
 28 **be considered.**

CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the appropriate agency filed concurrently herewith.

3. Plaintiff's complaint fails to state a claim upon which relief may be granted, see 28 U.S.C. § 1915A, and will not be served.

4. Within thirty days from the date of service of this order, plaintiff may file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the docket number assigned this case and must be labeled "First Amended Complaint." Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form used in this district.

6. The Clerk of the Court shall randomly assign a United States District Judge to this action.

IT IS FURTHER RECOMMENDED that plaintiff's motions for preliminary injunction (ECF Nos. 3, 8) be DENIED.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judges Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified

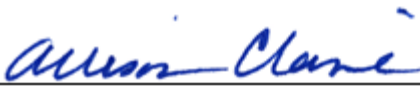
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time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: September 25, 2024

  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE